(1987) 03 MP CK 0029

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 1122 of 1984

Asho Jain APPELLANT

Vs

State of M.P. and Others RESPONDENT

Date of Decision : 05-03-1987

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Madhya Pradesh Entertainments Duty and Advertisements Tax Act, 1936 — Section 4C

Citation : AIR 1988 MP 230 : (1987) ILR (MP) 133 : (1987) JLJ 413 : (1987) 32 MPLJ 478

Hon'ble Judges : N.D. Oza, C.J;Faizanuddin, J

Bench : Division Bench

Advocate : M.M. Agarwal, for the Appellant; S.L. Saxena, Dy. A.G., for the Respondent

Final Decision : Dismissed

Judgement

N.D. Ojha, C.J.

By this writ petition, an order passed by the Collector, Satna determining the amount of entertainment duty and penalty u/s 4-C of the M.P. Entertainment Duty and Advertisement Tax Act, 1936 (hereinafter referred to as the Act), is sought to be quashed.

Having heard learned counsel for the petitioner, we are of the opinion that no case for interference under Article 226 of the Constitution of India has been made out.

The facts in a nutshell necessary for consideration of the points raised by learned counsel for the petitioner are that on an inspection, it was found that in the cinema hall owned by the petitioner, there were many persons who were sitting with used tickets inspection whereof showed that entertainment duty had been paid earlier. This clearly indicated that no fresh tickets had been issued to those persons with the result that entertainment duty to that extent was apparently evaded. On the basis of the report of inspection and other records, the Collector determined the amount of entertainment duty which appeared to have been evaded by the petitioner. He added another amount as penalty. The amount of penalty so added is admittedly less than the penalty which was permissible tp be imposed u/s 4-C of the Act.

It has been urged by learned counsel for the petitioner that even though the Collector had been authorised to pass an order u/s 4-C of the Act, he had not made the inspection on the basis of which the amount of entertainment duty and penalty had been determined. According to him, on a plain reading of Section 4-C of the Act, it would appear that he who makes inspection, can alone determine the amount of entertainment duty as well as penalty. Emphasis in support of this submission was placed by learned counsel for the petitioner on the words ''he may''. It was urged that the words ''he may'' used in Section 4-C of the Act read with the words, ''If on an inspection of the place of entertainment'' make it clear that it is the same person who had made the inspection who is authorised to pass an order u/s 4-C of the Act. We find it difficult to agree with this submission.

Section 4-C of the Act reads as under :

"4-C. Power to impose penalty -- If on an inspection of a place of entertainment, or after examination of the records, accounts and stocks of stamps maintained by a proprietor, the Excise Commissioner or any other officer as may be authorised by the, State Government in this behalf, comes to the conclusion that entertainment duty or advertisement tax payable under this Act has been evaded by the proprietor, he may, after giving the proprietor a reasonable opportunity of being heard, assess to the best of his judgment the duty or tax payable by the proprietor for a period not exceeding thirty days immediately proceding as if the evasion substituted for the whole of such period and he may direct that the proprietor shall pay by way of penalty in addition to the amount of duty or tax so assessed, as the case may be, a sum equal to half that amount for the first such evasion in a calendar year, and a sum not exceeding twice but not less than half that amount for the second or subsequent evasion in that year."

In our opinion, on a plain reading of Section 4-C, it is apparent that it is not necessary that the order contemplated by Section 4-C may necessarily be passed by the same person who had made inspection of a place of entertainment. This view of ours finds support from the use of the word ''or'' after the words ''if on an inspection of a place of entertainment'' and the words ''after examination of the records''. The import of the use of the word ''or'' is that even in those cases where no inspection of a place of entertainment may have been made, the Officer authorised to pass an order u/s 4-C of the Act can pass such an order after examination of the records, accounts and stock of stamps maintained by the proprietor. The word ''records'' is wide enough to include even inspection note in cases where an inspection may have been made. It has not been disputed before us that the Collector Satna who has passed the impugned order, had been authorised by the State Government as contemplated by Section 4-C of the Act to pass an order under the said section. Consequently, even if the Collector may not have inspected the cinema hall owned by the petitioner, he was competent to pass an order u/s 4-C of the Act on the basis of the inspection note which came under the purview of the word ''records'' and after examining other documents referred to in Section 4-Cof the Act. This is precisely what has been done in the instant case by the Collector, Satna.

In was then urged by learned counsel for the petitioner that the amount of entertainment duty said to have been evaded by the petitioner as also the amount of penalty as determined by the Collector in the impugned order, is excessive and erroneous. Suffice it to say so far as this submission is concerned that a perusal of the impugned order leaves no doubt in our mind that the amount of entertainment duty which according to the Collector had been evaded, has been determined on the basis that persons sitting in the hall were possessed of used tickets. The amount of duty evaded has thus been determined on a sound basis namely on the basis of such persons who were found to be sitting in the hall with used tickets. This is a valid basis. That apart, it is well settled that in case of best judgment assessment, so element of arbitrariness cannot be avoided. The amount of entertainment duty determined by the Collector in the impugned order on the material contained in the said order, cannot be said to be arbitrary so as to call for interference under Article 226 of the Constitution.

As regards amount of penally, as already pointed out, the said amount is lesser than the amount which could have been imposed u/s 4-C of the Act. What should be the amount of penalty, was a matter to be decided by the Collector in his discretion on the basis of material available on record. It is not possible for us to sit as a Court of Appeal and take the view that discretion exercised by the Collector is erroneous. Interference with the discretion may be possible only if it could be termed as''arbitrary''. In our opinion, there is no element of arbitrariness even in the determination of the amount of penalty.

No other point has been pressed.

In the result, this writ petition fails and is accordingly dismissed. There shall be no order as to costs. Security amount, if any, be refunded to the petitioner.

